

# TRIBAL HUNTING OVERVIEW

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*Washington*  
*Department of*  
**FISH and**  
**WILDLIFE**

# Outline

- Interpreting Treaties
- Tribal Government
- Hunting Case Law in Washington
- Hunting Agreements with WDFW
- Traditional Hunting Area Procedural Guidelines

# Stevens Treaty Language

“The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with the citizens of the Territory...together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands...”

# Interpretation of Treaty Rights

- Treaties are contracts between two sovereigns.
- Treaties are the “Supreme Law of the Land” in US Constitution; preempts state law unless conservation necessity.
- Treaty fishing and hunting rights belong to tribes, not tribal members.
- Courts interpret treaty language ambiguities in favor of the tribes. Treaty must be construed, not according to the meaning of words to learned lawyers, rather the meaning to Indians at the time.
- Treaties are a reservation of rights, not a granting of rights to tribes.

# Tribal Governments

- Federally Recognized Tribes (29 in WA)
  - Treaty Tribes
  - Executive Order Tribes
- Non-Federally Recognized Tribes
- 24 Tribes with Off-Reservation Hunting Rights in Washington (includes 3 tribes outside WA)

# Important State Supreme Court Case Law

- *State v. Miller* (1984)
- *State v. Buchanan* (1999)
- *State v. Chambers* (1973)

# *State v. Miller*

Two members of the Skokomish Tribe shot a cow elk in Olympic National Forest outside of state season.

The Court ruled that there is not an operative distinction between the words “right” and “privilege” as relates to construing Indian treaties.

The two words are synonymous.

# *State v. Miller* (cont'd)

State wildlife regulations applying to tribal members:

1. State regulation of tribal hunting only can apply when both “reasonable and necessary for conservation.”
2. State has the affirmative burden of proving these elements for a regulation to apply.

**Reasonable:** appropriate to its conservation purpose.

**Necessary:** required for the perpetuation of a species or game within a certain zone.

# *State v. Buchanan*

Nooksack tribal member harvested two bull elk without license and out of season at Oak Creek Wildlife Area.

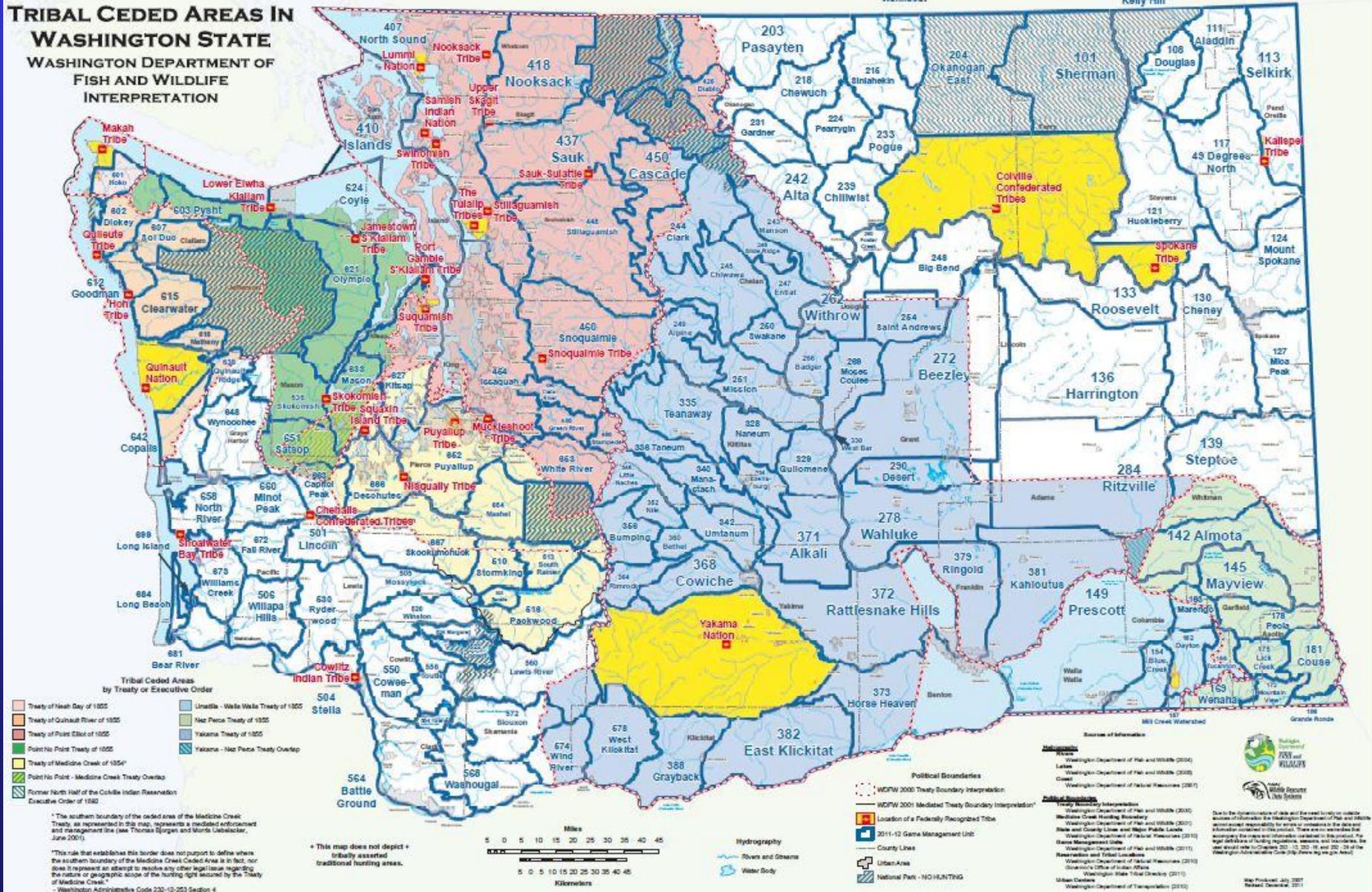
The State Supreme Court ruled that a tribe's treaty hunting right extends to the areas ceded to the United States by that tribe, and may also include areas outside of the ceded area where the tribe hunted historically, provided they can demonstrate traditional use.

A method to determine traditional use was not defined in the opinion.

Despite the decision, some tribes may view that their hunting right extends to open and unclaimed lands throughout the state.

# TRIBAL CEDED AREAS IN WASHINGTON STATE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE INTERPRETATION



# *State v. Chambers*

Unlicensed Yakama tribal member harvested a deer on private, fenced property (which was not signed) a short distance from unoccupied house.

Private land is not “open and unclaimed.” Private land needs “outward indications of such ownership observable to a reasonable man,” thus preventing entrapment.

# Open and Unclaimed Lands

“Open and Unclaimed Lands” are public lands that are being managed in a way that is consistent with hunting.

## Yes

US Forest Service

BLM

DNR

WDFW Wildlife Areas

## No

National Parks

University Lands

Military Reservations\*

WA State Parks

# Commission Policies

## Policy Document: July 20, 1996

### Section 6 of “Role of the Commission:”

Establish and maintain a cooperative management relationship with treaty tribes.

### Section 8 of “Role of the Director:”

Negotiate management agreements with tribes consistent with federal court mandates.

## Policy C-3607: April 3, 1998

- Acknowledges and respects sovereignty.
- Overlapping jurisdiction creates a co-management relationship.
- Department committed to cooperative management for preservation of healthy populations.

# Hunting Agreements

- History
  - Post-Buchanan
  - Medicine Creek
  - GMU 418
  - Regional Approach
- Geographic scope
- Regulation sharing
- Harvest information sharing
- Wildlife management meetings
- Private Industrial Timberlands
- Enforcement
- Damage hunt participation

# Hunting Agreements

## Current Agreements

- Point Elliott (8 of 9 member tribes have signed)
- Skokomish
- Jamestown S'Klallam and Port Gamble S'Klallam
- Lower Elwha
- Colville Confederated Tribes
- Cowlitz
- Medicine Creek Southern Boundary Determination

## Enforcement Agreements for Hunting/Public Safety Violations

- Colville Confederated Tribes
- Skokomish

# Traditional Hunting Area Discussions

## Draft Procedural Guidelines (July 2009)

- Assertion of traditional hunting area
- WDFW request supporting evidence
- Discuss with affected tribes and county prosecutors
- May result in enforcement discretion
  - Communicated to tribe; or
  - Included in an agreement



# Staff Team

## Regions:

- Regional Director
- Captain
- Regional Wildlife Program Manager

## Headquarters:

- Director
- Law Enforcement Chief/Deputy Chiefs
- Wildlife AD/DAD
- AGO

# Questions?

Tribal Hunting Information

on WDFW Website:

<http://wdfw.wa.gov/hunting/tribal/index.html>